

REMARKS

Claims 1-56 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1, 3, 4, 6-9 and 15-23 of copending U.S. Patent Application No. 09/931,123.

Without even addressing the merits of the double patenting rejection, Applicant respectfully submits that it should be withdrawn. This is a provisional obviousness-type double patenting rejection, in the earlier filed of two pending applications, and is the only basis cited for rejection. The MPEP is clear that a rejection should not be issued in this situation:

If a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

MPEP §804(I)(B)(1).

Nevertheless, in an effort to expedite prosecution (Applicant notes that this application was filed on February 16, 2000, more than seven years ago, and that a first Office Action was issued on March 27, 2002, more than five years ago),

Applicant is filing herewith a Terminal Disclaimer to obviate the double patenting rejection, along with the appropriate fee therefor.

For the foregoing reasons, Applicant respectfully submits that all pending claims, namely Claims 1-56, are patentable over the references of record, and earnestly solicits allowance of the same.

Respectfully submitted,



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